

Taweekoon (Migration) [2017] AATA 209 (29 January 2017)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Miss Sudarat Taweekoon
CASE NUMBER:	1611140
DIBP REFERENCE(S):	BCC2015/1495146
MEMBER:	Clyde Campbell
DATE:	29 January 2017
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa: • cl.820.211(2) of Schedule 2 to the Regulations • cl.820.221(1) of Schedule 2 to the Regulations.

Statement made on 29 January 2017 at 5:17pm

1. CATCHWORDS

2. Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner (Temporary)) – Genuine and continuing relationship – Mutual commitment to a shared life – Social aspects – Establishment of wills – Shared household responsibilities – Joint community activities

3. LEGISLATION

4. *Migration Act 1958*, s 5F s 5F(2)(a)-(d)
Migration Regulations 1994, Schedule 2, cl 820.211(2), cl 820.221(1), r 1.15A(1)-(4)

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

5. This is an application for review of a decision of a delegate of the Minister for Immigration on 4 July 2016 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
6. The applicant applied for the visa on 25 May 2015 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
7. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.221 because the delegate was not satisfied that the applicant and sponsor were in a spousal relationship as defined under s.5F of the Migration Act. The applicant seeks review of the delegate's decision. On 22 July 2016, the applicant applied to the Tribunal for review of the visa refusal decision, providing a copy of that decision to the Tribunal with her application.
8. The applicant, Sudarat Taweekoon, appeared before the Tribunal on 27 January 2017 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor, Mr Matthew McVeigh and supporting witness, Michael McVeigh.
9. The applicant was represented in relation to the review by her registered migration agent.
10. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

BACKGROUND

11. The applicant, Sudarat Taweekoon, is a 27-year-old citizen of Thailand. According to the visa application and material in support, she first met the sponsor, Matthew McVeigh, on 23 December 2012.
12. On 11 April 2013, the applicant and sponsor committed to a relationship. On 17 December 2014 the parties declared their relationship exclusive and committed to a shared life together. On 5 January 2015 the parties registered their marriage at the Registration Office of Kathu District, Phuket, Thailand.
13. The applicant has one child, a male born in 2006, from a previous de facto relationship. The mother's relationship with her son's natural father ended 9 years ago and they have not had contact since. This applicant's child, now aged 10, continues to live in Thailand with the paternal grandparents and the applicant regularly contacts her son by telephone and provides ongoing financial assistance for him.
14. The sponsor, Matthew McVeigh, is a 26-year-old Australian citizen by birth. The applicant and sponsor lived together as a couple in Brisbane, Australia, since 28 July 2014.

CONSIDERATION OF CLAIMS AND EVIDENCE

15. The issue in the present case is whether the sponsor and the applicant were at the time of the visa application, and continue to be at the time of decision, in a genuine and continuing spousal relationship to the exclusion of all others.

WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

16. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
17. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion as to these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of their financial arrangements, social aspects, the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

ARE THE PARTIES VALIDLY MARRIED?

18. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The applicant submitted to the Tribunal a certified copy of a marriage certificate, translated by NAATI accredited translator 66611. The parties' marriage was registered at the Registration Office of Kathu District, Phuket¹ on 5 January 2015. A traditional wedding celebration involving the families of both parties was held at Cape Panwa Hotel, Phuket, Thailand, on 25 August 2016. The Tribunal notes that an accredited translation of the marriage certificate was not available to the delegate at the time of the departmental decision. On the evidence available to the Tribunal, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?

19. The Tribunal has noted the paucity of evidence submitted at the time of application and observes that the delegate found there was insufficient evidence to conclude, under the relevant law, that the applicant was the spouse of the sponsor. The Tribunal also notes that the applicant and sponsor were unrepresented at the time of application.
20. At review, the applicant and sponsor acknowledged the insufficiency of documentary evidence submitted with the primary visa application and informed the Tribunal this was an unintended oversight on their part. The Tribunal has had regard for the claim that the couple had difficulty with completion of the online partner visa application form, as evidenced by the annotations² made by the applicant in her written responses to some of the online application form questions. The applicant and sponsor informed the Tribunal that they had encountered technical difficulties when submitting information with the online Visa application form and realised after submitting the document, that not all accompanying

¹T1 – f217 – 218 certified copy of registered marriage certificate

²D1 – f 6 item 2 and f 5 item 4

documents had been attached. The applicant and sponsor had attempted to rectify this matter by contacting the Department of Immigration. The Tribunal notes communication³ with the Department of Immigration by the sponsor and applicant in relation to the provision of additional information, including a completed 40 SP form.

21. The Tribunal has given consideration to the written materials submitted with the primary application and additional evidence submitted to the Tribunal at review, including the parties' oral evidence at the Tribunal hearing.
22. The Tribunal has given consideration to an extensive array of supporting documentary evidence⁴, not available to the departmental delegate at the time of decision, which is relevant to the visa application at time of application and time of review. These items include:
 - completed 40 SP document, executed by the sponsor;
 - statutory declaration of the applicant;
 - statutory declaration of the sponsor;
 - form 888 statutory declaration of Harrison Power;
 - form 888 statutory declaration of Alexander Jackson;
 - form 888 statutory declaration of Hannah Kilburn;
 - various photographic images of the couple with friends and relatives;
 - transactions of NAB classic banking account in joint names commencing 18 May 2016 to 4 January 2017;
 - NAB statements with residential address details;
 - RTA information evidencing joint tenancy at current residential address in Brisbane;
 - copy of the Will of the sponsor, with applicant as beneficiary;
 - receipts evidencing funds and transfers between 4 September 2013 to 20 March 2015;
 - receipts of wedding ring and certificate of authenticity;
 - gym membership details;
 - Optus telephone account details;
 - letter from sponsor's employer; and
 - PAYG payment summary for applicant for the period 3 August 2015 to 22 May 2016.
23. In assessing whether the applicant and sponsor have been in a spousal relationship, the Tribunal has considered the documentary evidence submitted with the primary application, additional documentary evidence that was provided to the Tribunal, and the oral evidence given during the review hearing. Having regard to the principles outlined in the decision of *Jayasinghe v MIMA* [2006] FCA 1700, when considering the circumstances of the relationship at the time of the visa application the Tribunal has had regard to later events as they tend logically to show the existence of prior facts.
24. At the commencement of the review hearing, the Tribunal explained the process for the merits review and the prospective decisions that could be made at the end of the review process. The Tribunal explained the protocols for the hearing, and especially the manner in which the hearing would be conducted. The function and independence of the Tribunal were explained. The relevant sections of the provisions under the Migration Act and Migration Regulations for granting a Partner Visa (Class UK) (subclass 820) were referenced. At the Tribunal hearing, the applicant and sponsor were supported by their representative.
25. The applicant, sponsor and supporting witness advised the Tribunal that they understood the process for the hearing. Both the sponsor and interpreter indicated there were no difficulties

³D1 – f 35 – 36

⁴T1 – f. 34-244

with translation dialect or comprehension. The Tribunal took evidence from the visa applicant, sponsor and supporting witness. For the record, the visa applicant and sponsor each provided their name, date of birth, place of birth and current residential address.

26. The Tribunal considered information relating to the applicant's visa history and specific details were correlated with departmental movement records. The Tribunal notes that the applicant first arrived in Australia as the holder of a Visitor (subclass 600) visa on 28 July 2014. The Tribunal notes that the applicant departed on 8 October 2014 and returned on 23 June 2015 on another Visitor (subclass 600) visa. The Tribunal also notes that on 25 May 2015, the applicant lodged a Partner (subclass 820 and subclass 801) visa application and was subsequently granted a Bridging (subclass 010) visa. At the time of review the Tribunal notes that the applicant was the current holder of a Bridging (subclass 020) visa. The Tribunal also notes that, in Australia, the applicant has been a lawful non-citizen.
27. The Tribunal asked the applicant and sponsor to provide particulars in relation to the development of their relationship. The applicant explained to the Tribunal that, on 23 December 2012, the parties met incidentally at the Yorkshire gym in Patong, Phuket, Thailand. The applicant and sponsor told the Tribunal that the sponsor approached the applicant to discuss places of interest to visit. The sponsor informed the Tribunal that, at this first meeting, the applicant agreed to show him some of the local highlights and accompany him to Paradise Beach with his friends. The applicant informed the Tribunal that, at this time, she worked at the Star Hotel, Patong.
28. The applicant and sponsor claim they got to know each other very well during the sponsor's visit to Thailand from December 23, 2012 to 7 January 2013. The friendship between the applicant and sponsor continued through online contact and Skype communication, until the sponsor returned for a second visit from 10 April 2013 to 21 April 2013. The applicant and sponsor told the Tribunal that their relationship strengthened and consolidated during the sponsor's second visit to Thailand and, at this time, they committed to each other.
29. The applicant informed the Tribunal that he returned to visit the sponsor from 11 September 2013 to 15 September 2013 and lived together in her apartment. During this time the relationship between the applicant and sponsor continued to grow. The applicant advised the Tribunal that around this time he began paying for the rent of the sponsor's apartment. The applicant and sponsor told the Tribunal that from 9 October 2013 to 14 November 2013, the sponsor again visited the applicant in Thailand and their relationship continued to grow even stronger as a couple. The sponsor advised the Tribunal that from 1 December 2013 to 8 January 2014 he again visited the applicant in Thailand for approximately 4 ½ weeks. During this time the applicant and sponsor enjoyed travelling to many parts of the country. Around this time the applicant and sponsor began preparing an application for a visitor Visa for the applicant to visit Australia. On 10 July 2014 the applicant's visitor (subclass 600) visa was approved with a cease date of 8 October 2014.
30. On 28 July 2014, the applicant told the Tribunal she arrived in Brisbane for her first face-to-face meeting with the sponsor's family. The parties lived together as a couple. The applicant and sponsor spent time together at the sponsor's rental property and soon after went on a camping trip to Double Island Point for four days with 10 of the sponsor's friends. The applicant informed the Tribunal that she and the sponsor spent quality time with his family and friends during the three months they spent together as a couple until 8 October 2014.
31. The applicant and sponsor informed the Tribunal that on 17 December 2014, the sponsor travelled with his sister, her fiancée and a friend to Bangkok where he was met by the applicant. On 17 December 2014 the sponsor proposed to the applicant and committed to an exclusive relationship. The applicant's family and the sponsor's family were strongly supportive of the relationship and claimed they were elated with the union and prospective

marriage. The applicant informed the Tribunal that around this time her sponsor met her grandparents, mother, father, brother, sister, and her cousins. The applicant advised the Tribunal that, during this time, she and her sponsor stayed in the applicant's mother's house and preparations for a small wedding ceremony were commenced. On 5 January 2015, the applicant and sponsor signed marriage documents in Phuket. The sponsor returned to Australia on 7 January 2015.

32. The applicant told the Tribunal that on 19 March 2015 she was granted a visitor visa (subclass 600) with a cease date of 26 June 2015. The applicant arrived in Australia to be with her husband on 26 March 2015 and soon after the couple attended the sponsor's sister's wedding in Maleny where the applicant met the sponsor's entire family for the first time. After a month living together at the sponsor's rental accommodation, the couple moved to the sponsor's parent's residence at the Gap, Brisbane.
33. The Tribunal notes that, on 25 May 2015, the applicant lodged a valid application for a Partner (Temporary) (Class UK) visa. A Bridging (subclass 010) visa was granted to the applicant on 25 May 2015. The Tribunal notes that the applicant is the current holder of a bridging (subclass 020) visa.
34. The applicant informed the Tribunal that, in August 2015, she secured part-time work at a local car wash business. At time of review, the applicant is working as a Thai massage therapist at Red Hill, Brisbane.
35. The applicant and sponsor informed the Tribunal that, in the period from May to August 2015, as a married couple, they made a lot of serious plans for the future, including the holding of a traditional marriage recognition ceremony in Thailand. The Tribunal accepts that on 25 August 2016, the parties participated in a traditional wedding celebration at Cape Panwa Hotel, Phuket, Thailand in the presence of immediate family members and friends from Australia and Thailand.
36. The applicant advised the Tribunal that she was currently learning English and studying for a driver license. The sponsor advised the Tribunal that he was currently progressing an application for a Builder's (HIA) License.
37. The parties informed the Tribunal that, after returning to Australia on 12 September 2016, the couple lived together at a new location in Brisbane, as joint tenants in a rental property. The applicant advised the Tribunal that, at this time, she and her husband began implementing plans for their future together and setting up their joint finances and living and work arrangements as a couple.
38. Both the applicant and sponsor advised the Tribunal that family members in Thailand and Australia continue to be strongly supportive of their relationship and marriage.
39. The Tribunal has had regard for oral statements made by the applicant and sponsor at hearing, as well as the supporting statements submitted at review, which suggest to the Tribunal that the couple represent themselves to other people as being in a deeply committed married relationship.
40. The Tribunal has given consideration to the comprehensive statutory declarations submitted by the applicant and sponsor at the time of review and notes the particulars of their relationship development. The Tribunal has also given consideration to additional individual submissions from friends and family describing the development of the couple's relationship.

41. The Tribunal accepts that at the time of review, the quantum of cogent and relevant evidence submitted in support of the couple's spousal relationship exceeds that available to the decision-maker at the time of application.

42. *Financial aspects of the relationship*

43. In relation to the financial aspects of the couple's relationship, both the applicant and sponsor presented consistent evidence to the Tribunal. On the basis of evidence before it, the Tribunal finds that, at the time of application and time of review, the couple pooled their resources, and shared day-to-day household expenses. In relation to ongoing financial aspects, there is evidence before the Tribunal that, from September 2015, a joint bank account has continued to be used by the applicant and sponsor for aggregating resources, paying bills, sharing day-to-day household expenses and saving for the future.
44. The applicant and sponsor advised the Tribunal, that they were in full-time employment. The applicant advised the Tribunal she worked as a massage therapist for Forum-A PTY LTD, five days per week from 9:30 AM to 7:30 PM. The sponsor told the Tribunal that he was employed on a permanent basis as head carpenter with McVeigh Homes PTY LTD.
45. The Tribunal has given consideration to the bank statements and details of transactions submitted at the time of visa application and at the time of review. The couple informed the Tribunal that each person held an individual bank account and a joint bank account linked to an ATM cards.
46. The Tribunal notes on the evidence before it, that the couple appeared to have a sound financial base, a steady income stream and were accruing savings. The Tribunal accepts that the parties share day-to-day household expenses, with each party being responsible financially for their own expenses.
47. The Tribunal has given consideration to the bank statements and details of transactions submitted at the time of visa application and at the time of review. The couple informed the Tribunal that each person held an individual bank account and a joint bank account linked to an ATM cards.
48. The couple provided evidence to the Tribunal about their setting up of last Wills and Testaments with each other as the nominated beneficiary.
49. The applicant and sponsor provided oral and written evidence of residential tenancy agreements and bond lodgements in relation to the properties in which they resided together as a couple in Brisbane. The Tribunal notes that in November 2016, the parties signed a rental agreement as sole occupants, for an apartment in Brisbane. Both the applicant and sponsor advised the Tribunal that each contributed to the rental payments and the Tribunal accepts that this is demonstrative of an entwining of their financial affairs.
50. After careful consideration of the evidence, the Tribunal is satisfied that the applicant and sponsor had linked their finances in a very substantial fashion at the time of the visa application, and continue to do so at the time of review. Accordingly, the Tribunal has placed high weight upon the evidence in support of the financial aspects of the relationship.

51. *Nature of the household*

52. The Tribunal has had regard to the respective statutory declarations before the Tribunal with respect to the relationship as well as the oral evidence on these matters. The applicant and sponsor gave very detailed oral evidence concerning their living arrangements as a couple from the commencement of their relationship until the present time. The applicant told the

Tribunal that on 11 April 2013 she committed to a shared life with the sponsor, to the exclusion of others.

53. The applicant and sponsor impressed the Tribunal as honest witnesses who gave evidence to the Tribunal to the best of their recollection, including on matters regarding a period around four years prior to the review hearing. The sponsor's oral and written evidence corroborated that of the applicant's. The Tribunal was impressed with the extent, relevance and additional detail of the documentary evidence submitted at review.
54. The applicant and sponsor informed the Tribunal that, since the inception of their committed relationship as a couple, they have jointly shared household tasks, including shopping, cooking, and cleaning. The couple informed the Tribunal that they jointly shared responsibility for household chores, whilst making sure that they regularly set aside time for other joint activities, including the Gym membership.
55. Both parties gave consistent evidence that they shared household duties since they commenced cohabitation in 2014. The Tribunal accepts this evidence. After careful consideration, the Tribunal places high weight upon the evidence in support of the nature of the household regarding the relationship between the applicant and sponsor, both at the time of application and the time of this decision.

56. *Social aspects of the relationship*

57. The applicant furnished the Tribunal with a collection of labelled images and social media photographs documenting the social aspects of her relationship with the sponsor from 2012 until the present time. Whilst many of these photographs depict the applicant and sponsor only, many show the couple with family members in Australia and Thailand. Photographs of the wedding celebrations demonstrate that the couple present themselves to others as husband and wife. At the hearing, the Tribunal asked the applicant and sponsor to identify and discuss the details of persons in group photos. The photographs tend to suggest the couple has maintained a circle of friends, but importantly that their respective families have strongly acknowledged and supported the parties' relationship.
58. At review, the Tribunal asked the applicant to show details on her current social media (Facebook page) and present information relating to her personal profile and friendship profile. The Tribunal accepts that the applicant's details on her Facebook page at the time of review listed her status as married to the sponsor and contained detailed photographic images and statements to substantiate her relationship with her husband and evidence of the parties presenting themselves as a couple socially.
59. The Tribunal has given consideration to a bundle of various cards information and letters submitted by the parties at the Tribunal hearing, which lead the Tribunal to accept that the applicant and sponsor identify socially as a married couple and jointly participate in various activities within the community.
60. The various statements and declarations from supporting witnesses, family, and friends lead to the Tribunal to accept that the applicant and sponsor are well known to the witnesses and each has been in the physical presence of the couple, and communicated with them on a regular basis. The Tribunal notes the collective opinion and the cogent reasons given by all witnesses for why they believe the applicant and sponsor are in committed, genuine long term relationship. The Tribunal places high weight upon the evidence from the couple's family members and friends indicating their acceptance of the relationship and verifying the genuineness of the couple's relationship.

61. After careful consideration of the relevant information before it, the Tribunal places high weight on the evidence in support of the social aspects of the relationship, both at time of application and time of decision.

62. *Nature of the persons' commitment to each other*

63. Having regard to the documentary and oral evidence provided by the applicant and sponsor, the Tribunal accepts the couple initiated their relationship in 2012, committed to an exclusive partnership in December 2014, and married in January 2015. The Tribunal has given consideration to the length of time the parties have lived together and accepts they have cohabited together as a couple for almost 3 years.

64. The applicant informed the Tribunal she had been in a previous de facto relationship in Thailand at the age of 17 years, and a child resulted from this partnership. The applicant told the Tribunal this relationship lasted only a year after the child was born in 2006 and, since then, the applicant has had no further contact with the child's father. The applicant informed the Tribunal that the child continues to be raised by the paternal grandparents in Thailand. The sponsor advised the Tribunal he was aware of the applicant's previous relationship and has since met the applicant's son. The parties told the Tribunal that there were no plans for the applicant's child to migrate to Australia at this stage. The Tribunal notes that the applicant and sponsor provide support for the child via regular cash transfers to the applicant's sister-in-law, who then ensures that the child receives support. The Tribunal accepts the applicant's claims she was not previously married and notes a minor error in completion of the Visa application form, where a date of marriage was submitted as 5 January 2010⁵, instead of 5 January 2015 (to the sponsor).

65. The applicant and sponsor informed the Tribunal they had regularly discussed their long-term future together as a couple and their plans for the future included having children; purchasing a residential property; the applicant establishing a Thai massage therapy business; the sponsor gaining building licence accreditation; and the couple visiting family in Thailand.

66. Both the applicant and sponsor gave oral evidence strongly indicating they draw companionship and emotional support from each other. In particular, the applicant described how crucial the support of the sponsor had been in learning English and supporting her to find work. Both members of the couple gave oral evidence to the Tribunal as to the importance of each other in their lives and their hopes to enjoy a happy future together.

67. The Tribunal is therefore satisfied that the applicant and the sponsor are committed to each other as a married couple and view their relationship as a long term one. After careful consideration of the evidence, the Tribunal places high weight upon the evidence in support of the nature of the couple's commitment to each other.

68. **FINDINGS AND REASONS**

69. The Tribunal finds the applicant and the sponsor to be truthful witnesses. The parties have given consistent evidence of their spousal relationship and their commitment to one another, which tends to support the conclusion that their relationship is a genuine one.

70. In oral evidence, the parties provided detailed and consistent information about the circumstances of their meeting and the development of their relationship. The Tribunal accepts the credibility of their evidence which tends to support a mutual commitment to a shared life together as husband and wife to the exclusion of others.

⁵ D1 – f8 - response to item to on relationship status

71. Notwithstanding the fact that the applicant and sponsor have known each other for over 5 years and married for more than two years, the Tribunal finds that the applicant and sponsor first entered into a committed relationship on 11 April 2013, four years prior to the time of visa application. The Tribunal also finds that the couple entered into an exclusive committed relationship on 17 December 2014, culminating in marriage on 5 January 2015, six months prior to the lodgement of a Partner Visa application.
72. The Tribunal finds that the applicant's and the sponsor's families have developed a close and enduring relationship with the married couple. The Tribunal finds there is substantial evidence before it, including statements from third parties and photographic evidence, to conclude that the sponsor and applicant identify as a committed couple in public and when socialising together with family and friends. The Tribunal accepts the couple has established engaging relationships with their respective families. The Tribunal also finds that the families of the couple have become increasingly supportive of the spousal relationship.
73. The Tribunal finds the oral evidence of the applicant and sponsor about their daily lives was detailed and consistent. The Tribunal accepts the couple plan and undertake joint activities and daily tasks. The Tribunal accepts that the parties represent themselves to other people as being married to each other. The Tribunal finds that, in the opinion of friends and acquaintances, the parties' relationship is a genuine one, with a strong uniting bond.
74. The couple provided detailed evidence about their financial arrangements and the Tribunal finds that, from the time of application to the present, they have continually operated a joint bank account, pooling their financial resources and sharing day-to-day living expenses. The Tribunal accepts that the parties' joint account is used mainly for handling joint income and expenditure and transacting all their major financial commitments as a couple. The Tribunal finds that the applicant and the sponsor, whilst maintaining individual bank accounts, aggregate their financial resources and share day-to-day household expenses.
75. The Tribunal finds the parties and supporting witnesses provide consistent and convincing evidence about their joint arrangements for living together as a married couple. The evidence at time of application and time of decision about the couple's living arrangements was consistent and the Tribunal accepts that the parties have established a joint household. The Tribunal accepts that the parties share the daily household responsibilities and domestic duties.
76. The Tribunal finds that the couple's committed relationship has existed for almost four years. The Tribunal is satisfied that the couple has lived together since September 2013, and since 28 July 2014 in Australia, the parties have continued to cohabit in a strong relationship as a married couple, providing robust companionship and emotional support to one other.
77. The Tribunal finds that the couple view their relationship as a long-term one with mutually agreed plans to continue to support the applicant's family and her son in Thailand; have children together; establish a joint business; obtain further professional accreditation and qualifications; and purchase their own residential property.
78. Overall, the Tribunal is satisfied that the applicant and the sponsor have a mutual commitment to a shared life to the exclusion of all others and draw a high degree of companionship and emotional support from each other.
79. The Tribunal is satisfied that there is substantial credible evidence of a genuine, committed and exclusive relationship developing over time and existing at the time of application on 25 May 2015, and at time of review.

80. Having regard to the matters above, the Tribunal is satisfied that the applicant and sponsor are validly married, have had, and continue to have, a mutual commitment to a shared life as husband and wife to the exclusion of all others, and that the relationship between them has been and remains genuine and continuing. The Tribunal is also satisfied that they have lived together since September 2013. The Tribunal is therefore satisfied that the requirements of s.5F(2)(a)-(d) of the Act were met at the time of the visa application and continue to be met at the time of this decision. The Tribunal is satisfied that the applicant is the spouse of the sponsor as defined under s.5F of the Migration Act.
81. Having tested the cumulative and individual evidence available to the Tribunal at review against the relevant regulatory provisions found in regulation 1.15A of the Migration Regulations, the Tribunal is satisfied that the parties' relationship is genuine and continuing to the exclusion of all others. The Tribunal is also satisfied that the sponsor was aged over 18 years when he sponsored Ms Taweekoon and, further, that he is not prohibited from being a sponsoring partner. Therefore the Tribunal finds that Ms Taweekoon meets the requirements of clauses 820.211(2) and 820.221(1).
82. Given these findings, the Tribunal is satisfied that, at the time that the application was made and at the time of the Tribunal's decision, the parties were in a genuine and continuing spousal relationship for the purposes of the Migration Regulations. The applicant therefore meets the provisions of cl.820.211(2) and cl.820.221(1).
83. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

84. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa:
- cl.820.211(2) of Schedule 2 to the Regulations
 - cl.820.221(1) of Schedule 2 to the Regulations.

Clyde Campbell
Member

85.

86.

ATTACHMENT - EXTRACT FROM MIGRATION REGULATIONS 1994

1.15A SPOUSE

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).